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July 5, 1996

Office of the Secretary
Federal Communications Commission
Washington, DC 20554
Attn: William F. Caton Acting Secretary

RECEIVED

JUL 8 1996

Dear Mr. Caton:

Please find enclosed ten (10) originals entitled "Response of ACTEL, Inc. to Federal Communications Commission....FCC 96-253 ... CC Docket No.92-77....In the matter of: Implementation of Billed Party Preference for InterLATA 0+ Calls.

I have submitted sufficient documentation to provide each Commissioner a personal copy.

Under separate cover, I have submitted two additional originals to the Common Carrier Bureau, Enforcement division.

I have also filed one copy with the Commission's copy contractor, International Transcription Services.

Also, forwarded to Adrien Auger of the Common Carrier Bureau is a diskette containing two (2) files comprising these comments. One file ("Response of ACTEL - FCC 96-253") represents the main body of this document. The second file ("Charts FCC Docket on BPP") represents Exhibits A, B,C,D,E & F included in the comments.

If you have any questions please contact me at (201) 989-9012.

Thank you for your attention.

Sincerely,
ACTEL, Inc.

Arthur Cooper
President
Enclosures: 10

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RESPONSE
OF
ACTEL, INC.
TO FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
FCC 96-253
CC Docket No. 92-77

RECEIVED
JUL 8 1996
TELECOM ROOM

In the matter of:

Billed Party Preference for InterLATA 0+ Calls

ACTEL, Inc. ("ACTEL") is a New Jersey corporation in the business of providing public pay telephone services throughout the State. All public pay phones that ACTEL owns and operates are installed and maintained in New Jersey by employees in New Jersey. ACTEL installed its first public pay telephone on November 21, 1987. As of this writing, ACTEL operates approximately 260 public pay telephones. Of these, approximately 65% of these phones are installed in public locations in "inner-city" areas including Newark, Jersey City, Paterson, the Oranges, Elizabeth, and New Brunswick (see Exhibits A and B). From the very beginning, ACTEL sought to provide service to the inner-city due to an estimated 20% of inner-city residents who do not have residential service. In addition, ACTEL noted that these areas are "under-served" by the dominant carrier, Bell Atlantic of New Jersey ("BA-NJ").

I am President and owner of ACTEL. I am a member and Trustee of New Jersey Payphone Association (NJPA). I am also a member in good standing with American Public Communications Council (APCC). It is estimated that there are approximately 20,000 pay phones, in New Jersey alone, installed by competing non-local exchange companies ("non-LEC") providing service to 123 million callers per year. While ACTEL provides service to approximately 1.2% of this total, we are proud of the service we have provided. We employ 3 full time service people responsible for maintaining service of the phones (6 days a week throughout the year), my wife, and myself, who are responsible for management / executive responsibilities of the business. I have personally invested my life savings into ACTEL and have had few days off since starting this business. My commitment to ACTEL, the industry, and ultimately the consuming public can be unquestioned.

ACTEL wishes to comment upon the Second Further Notice of Proposed Rulemaking (NPRM) commenced by the Federal Communications Commission (FCC) with respect to payphone service providers (PSPs). I am pleased to agree and support the FCC in its efforts to develop a competitive marketplace designed to result in improved service at lower prices. However, as I will fully discuss, with respect to operator service providers ("OSPs") and payphone service providers ("PSPs"), the proposed rules of the FCC will not achieve the desired effect; instead they will provide less choice to consumers, and, yes, as I will demonstrate, drive me and my company out of business.

The large focus of my objection centers on those provisions in the rule-making that propose to limit the rates charged for operator-assisted calls. My objection further centers on the fact that the FCC has ignored the 97.4% of the calls made at my pay telephones for which we operate at a loss or receive no revenue whatsoever. In other words, local and non-local operator assisted calls account for 2.6% of the completed calls from my public pay telephones. The following breaks down the four (4) categories of phone calls placed from ACTEL's public pay telephones (see Exhibit C).

Free Calls (911, 411, 211)	3.0%
Coin Calls	67.4%
Non-revenue Calls	27.0%
Operator-Assisted Calls using an OSP	2.6%
Total	100.0%

While the proposed rules target these 2.6% of the calls made from these phones, saying that the rates are too high...and they are!; the FCC has ignored the underlying "rate gouger", Bell Atlantic of New Jersey. In other words, the FCC must not seek to limit the rates for 2.6% of my calls without fully reviewing and acting upon the rates I am forced to pay to Bell Atlantic. Please consider the following severe cost pressures I experience everyday when 97.4% of the public uses my phones, either without covering my costs or without paying me anything.

1. Bell Atlantic charges ACTEL twenty (20) cents per call for everyone who dials 411 information from an ACTEL payphone. However,

they provide this service for free from their pay phones on the retail level. This charge costs ACTEL more than \$8.00 per phone per month.

2. Bell Atlantic charges \$27.22 per month for every telephone line which ACTEL uses. The identical service provided to ACTEL for its business line is more than 60% less. This excess costs ACTEL more than \$15.00 per phone per month.
3. Bell Atlantic charges fifteen hundred (1500) percent above its own estimated cost of providing a local call. This costs ACTEL more than \$45.00 per phone per month.
4. Bell Atlantic receives access fees (interconnect fees) for all 800, 950, 10XXX and 800 subscriber calls made from ACTEL phones.
ACTEL receives nothing yet is the company who provides the access through the maintenance of the phone itself. This lack of dial around compensation / access fee costs ACTEL more than \$60.00 per phone per month.

411 Information - the average phone provides thirty-two (32) 411 calls per month for which ACTEL does not charge the customer (although it may under present regulations charge up to twenty cents). Bell charges me for these calls amounting to an average of \$8.00 per month per phone.

Line Charges - This charge is approximately \$11.00 for virtually the identical service for my business line and approximately \$8.00 for my residential line. ACTEL pays 300-350 percent higher or \$27.22 for its pay

phone lines. ACTEL therefore pays \$15.00 extra for virtually identical service. ACTEL has no choice in the matter; we must lease those lines from Bell.

Local Calls - while ACTEL buys its non-local calls from MCI, it must purchase its local calls from Bell. From my home phone line, I can make any local call at no charge from Bell. However, for every local call from my pay phones, I am charged six and a half cents per message unit, an estimated 1500 percent above Bell's cost for this service.

Dial-Around - ACTEL invests in the equipment, the lines, the personnel, and all other aspects of providing access to the public, yet receives no dial-around compensation, providing these calls for free to the public. These same calls generate revenue for Bell, and all other carriers who are part of the call e.g. the originating LEC (Bell), the interconnect (e.g. AT&T), the RBOC (e.g. Ameritech) and the terminating LEC (e.g. Pacific Bell) (See Exhibit D). ACTEL is left to wonder "what about me?"

ACTEL's average Bell bill for a single pay phone involving local service is \$64.76 per month. The same calls made from my residential phone would cost approximately \$12.75. In fact, ACTEL pays Bell fully half of all the gross coin revenue it receives (a 50% commission).

Of great frustration is the fact that there is State of New Jersey legislation already in place that, if enforced, would have greatly relieved the clear inequities that exist in my industry. Specifically, the Telecommunications Reform Act of 1992 states that non-competitive services

(those services we can only purchase from Bell) needed to provide competing services (such as pay telephone service) must be provided to competing companies at terms and conditions, including price, that are identical to those terms and conditions it offers itself. In other words, Bell must provide lines, local calls, and all other non-competitive services at terms and conditions, including price, that are identical to the terms and conditions of Bell's Coin Division.

Of course, Bell is not abiding by the statutes alluded to in the Telecommunications Reform Act of 1992. It is strongly believed that Bell, operating under the exact same rules as NJPA, could not economically operate its Coin Division. The result will be very simple; Bell's Coin Division, operating with no cross-subsidy, will require the same relief my industry does i.e. significantly lower rates from Bell (parent), 411 at no charge, and dial-around compensation. Without this relief, Bell Coin would need to charge higher rates to the public. Under the same rules as my industry currently operates, Bell Coin would need significantly increased rates for operated-assisted calls to defray the high rates charged by Bell and the lack of compensation for dial-around and subscriber 800 calls.

More desirably, I would hope that Bell would charge its Coin Division significantly lower rates and, at the same time, lower our rates to effectively "level the playing field." This would have the best effect on the consumer pushing prices down to the consumer.

At this point, I wish to point out a few related issues that the FCC has clearly not considered to date:

1. Where ACTEL has a choice (toll calls and long distance), ACTEL receives better rates resulting in lower rates to the consumer.

Because ACTEL no longer needs to buy its toll calls from Bell or its long distance calls from AT&T, ACTEL's coin rate for these calls is lower than any Bell pay phone. For instance, any long distance coin call from an ACTEL phone is now only 25 cents per minute; the same calls from a Bell phone are more than \$2.00 for the first minute. This is even more significant when you consider that these long-distance and toll coin calls account for 25% more consumers than the OSP calls that the FCC is concerning itself with in this rulemaking.

2. ACTEL has expanded its business into the competitive marketplace of long-distance pre-paid phone cards. ACTEL provides some of the lowest rates available for non-coin callers and is made available at hundreds of retail outlets in New Jersey.

My point: Where there is fair competition, ACTEL can and does provide improved services at very competitive prices. Where there is unfair competition, ACTEL cannot reduce its prices without real and immediate relief on the cost side of the equation as described earlier.

There are still further issues that the FCC does not seem to be considering. As a provider to poor urban communities, it is a fact of life that theft and vandalism is a major cost of operations. This fact alone should make it clear to the FCC that our rates must not be capped without a clear study of the obvious costs that we are faced with.

Additionally, the FCC has not yet provided for dial-around compensation for all affected calls. The absence of adequate dial-around compensation for all affected calls (27% of ACTEL's calls), has actually aided in the rise of OSP rates from the competing pay telephones. With the dominant carriers advertising millions for 800 COLLECT, 800 OPERATOR, and 10288, we have been forced to open access to these dominant carriers.....AND WITHOUT ANY REAL COMPENSATION FOR PROVIDING THE ACCESS. During this time, the calls being handled via "0" (OSP handled calls) has dwindled from close to three (3) calls per day to 0.8 calls / day (see Exhibit E). Since we are locked into Bell for local service, we must provide free access for 411 and free dial-around calls including subscriber 800, and the supply of OSP calls has diminished, the economic result was quite predictable...OSP rates have gone even higher over time due to the diminished supply of "truly revenue-producing" calls (see Exhibit F).

If the FCC provides adequate dial-around compensation for all affected calls, the need for this rulemaking will be obviated. Simply put, if ACTEL received adequate dial around compensation for all affected calls, this would dramatically increase the supply of revenue-producing calls; this would take

the pressure off of OSP rates. Let me simply state: If the FCC would simply, and immediately, adopt and implement the rules of CC Docket No. 96-128 in the matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, including ACTEL's proposal requiring that the LEC be required to form a structurally separate affiliate for its pay phone operations, ACTEL could survive, and therefore, would agree to a reasonable cap. Further, the need to adopt the proposed rules in this NPRM would be clearly obviated. ACTEL would no longer have to or wish to charge high rates for the 2.6% of the calls the FCC wishes to regulate in this matter. ACTEL would be free to seek the best service at the best rate without the current, and necessary dependence on, OSP commissions and surcharges.

Let me be clear: If the FCC adopts the rules, as is, without simultaneous and immediate implementation of CC Docket No. 96-128 providing immediate and adequate dial-around compensation for all dial-around and toll-free subscriber calls (800 and 888) my company will be forced to seek relief from the bankruptcy courts. Frankly, the FCC put us in business well over a decade ago under the principal of creating and maintaining increased and fair competition in the telecommunications marketplace. However, there is not, nor has there ever been, real competition in this marketplace. Instead, I have been forced to hold my own and try to eke out a profit relying solely on necessarily high operator-assisted rates. It is my desire to have the lowest rates available for all kinds

of calls including the 2.6% of my callers that dial "0" first for their calls. However it was never my desire to actually have an interest in the type of call my customers were making. It was my intention to be the "gateway access provider" having no vested interest in the dialing pattern of the consumer. I have outlined here very specifically what must be done for this to happen.

I urge and implore the FCC to create linkage between CC Docket No. 96-128 and 92-77 to insure that my only revenue source addressed in this docket is simultaneously balanced by the protections and corrections contained in 96-128.

Link the NPRMs so as to allow simultaneous implementation of dial-around compensation, implementation of the Pay Phone Provisions of the Telecommunications ACT of 1996, and rate caps / consumer information for all operator-assisted calls. This must be a complete and comprehensive rulemaking procedure designed to address the full nature and scope of these important issues; not one that addresses the surface-level symptomatic problem of high OSP rates.

There are numerous legal and common sense reasons for the FCC to not adopt the rules in this procedure affecting rates. Remember that ACTEL provides lower rates to more callers than it provides higher rates via the OSP route. Implementation of the rules would force my "already significantly lower coin rates" to go up. Implementation of the rules would force me to

begin charging twenty (20) cents for every 411 information call.

Implementation of only the rules in this NPRM would force me to raise my rates for coin toll calls. All of these actions, however, would not prevent my ultimate disaster; the forced bankruptcy of ACTEL. Industry-wide this would affect more than 100 million callers per year in New Jersey alone; largely in inner-city neighborhoods.

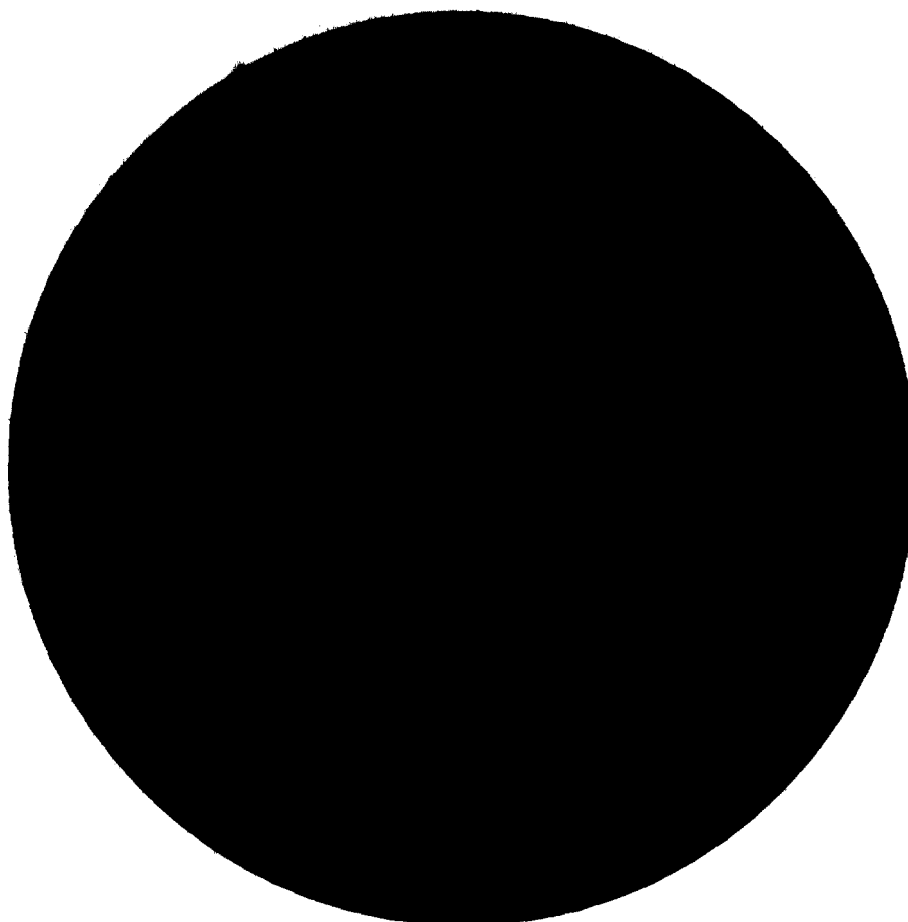
What ACTEL wants is to stay in business providing needed services to the public, particularly in the inner-city, while earning a reasonable return on investment. Until now, the only way that ACTEL could accomplish this economically was by pricing its OSP calls at levels that overcome the operating losses resulting from coin calls (due to Bell's charges as described earlier) and uncompensated calls. Data pertaining to ACTEL is included in exhibits contained in comments submitted by Dennis Linken, attorney for NJPA. Please refer to those exhibits for further substantiation of these facts. This data is protected by assigning each company that participated in the cost study a number. However, ACTEL desires to provide full information / access to the FCC for any information it desires from ACTEL. While these comments are a matter of public record, ACTEL will, with the proper protections of confidentiality, supply the FCC with:

1. Summary Data that provides, on a phone-by-phone basis, the calling patterns for all types of calls illustrating the relative weight of each type of call made from the pay phone.

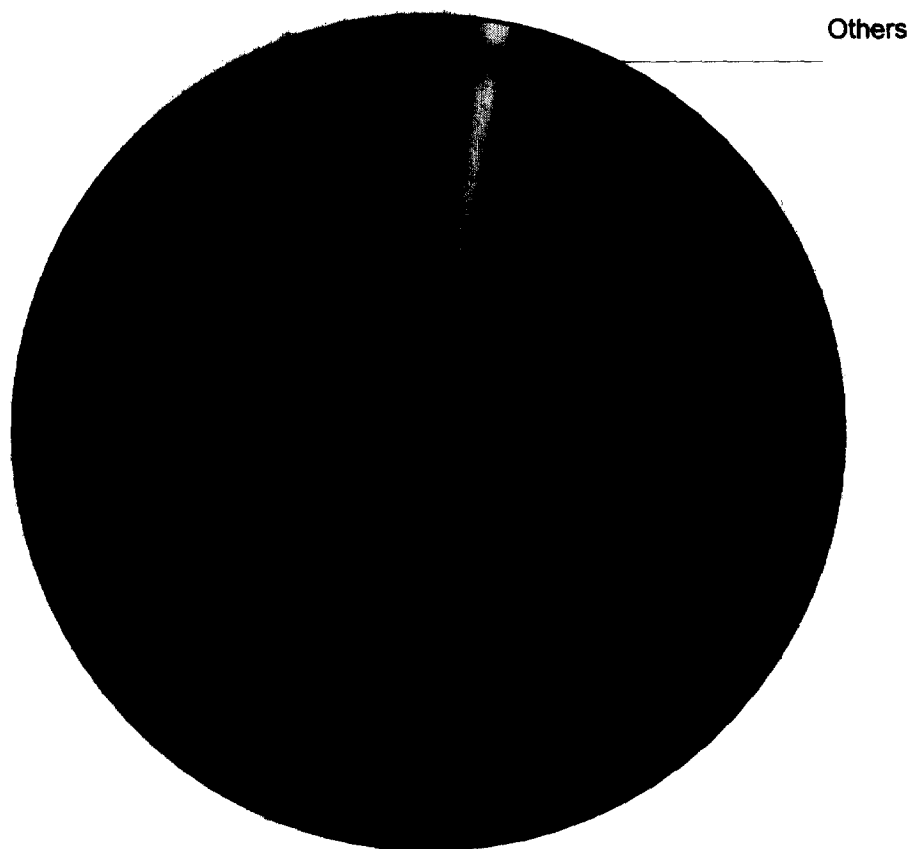
2. Detail of the data in number 1 showing all calls made from each pay telephone.
3. Corporate financial statements for any and all years of ACTEL's existence prepared by Dugan, Colthart, & Zoch.
4. Any and all data requested by the FCC towards achieving a full review of the operations of ACTEL, Inc. towards the goal of developing fully comprehensive rules designed to achieve the FCC's stated goals of fostering a truly competitive marketplace in the pay phone industry.

Finally, ACTEL urges the FCC to eliminate the enforcement measures as written. Instead, amass all of the underlying facts that have resulted in the symptomatic problem of excessive OSP rates. Then adopt the rules in CC Docket No. 96-128 adding the requirement that the LEC form a structurally separate affiliate for its pay phone operation. ACTEL feels that this being accomplished, the rules involving rates and customer information / warnings will be obviated; simply put, ACTEL's rates for OSP services from its pay phones would fall well within the published guidelines contained in this rulemaking. Why make a rule that should never need to be enforced?

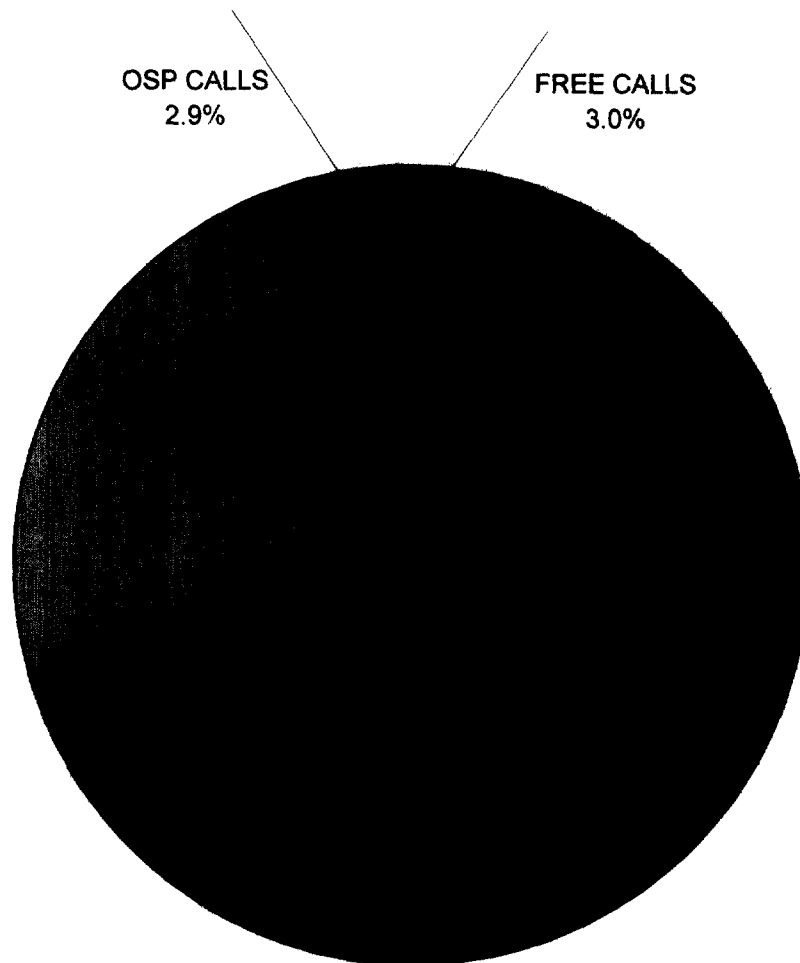
WHERE ACTEL PROVIDES SERVICE

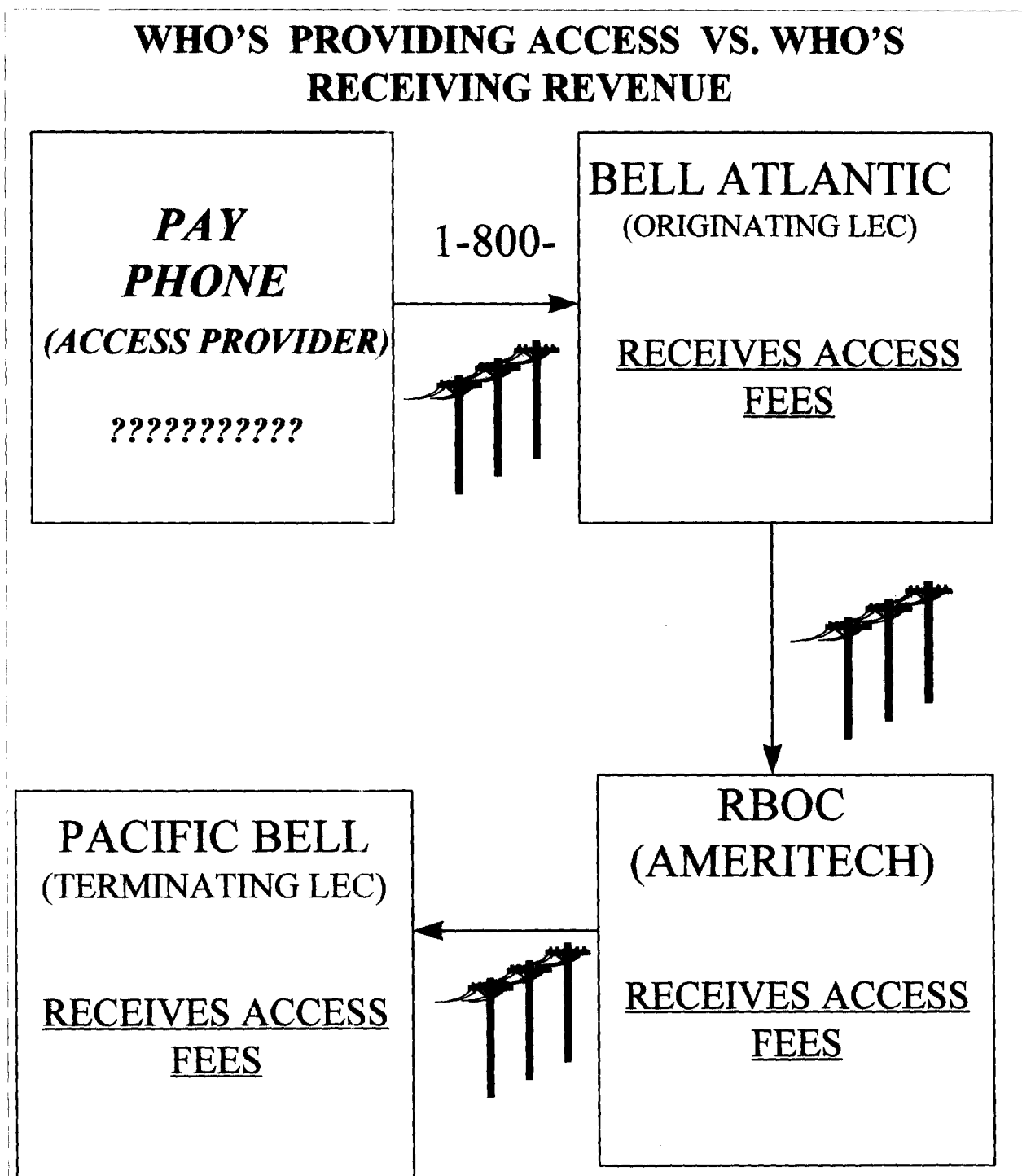


***NEW JERSEY CITIES RECEIVING SERVICE FROM
ACTEL***



CALL DISTRIBUTION





EFFECT OF DIAL AROUND ACCESS ON OSP CALLS

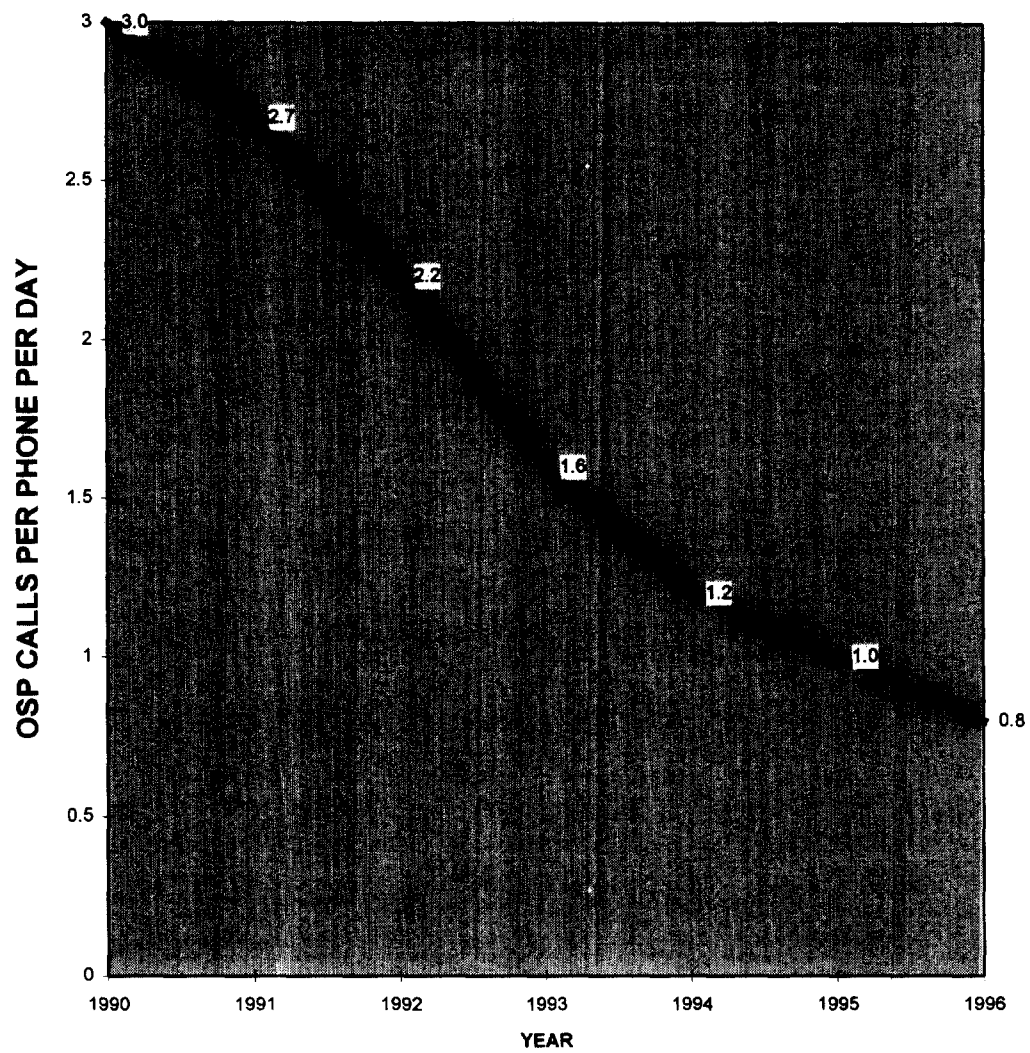


EXHIBIT F

